



All-Party Parliamentary Loan Charge Group

www.loanchargeappg.co.uk

Jim Harra
Chief Executive and Permanent Secretary
HM Revenue and Customs
100 Parliament Street
London
SW1A 2BQ

16th February 2021

Dear Mr Harra,

HMRC/RCDTS use of contractors who were using loan schemes – call for investigation

We are writing to you regarding HMRC/RCDTS use of contractors who used so-called ‘disguised remuneration’ (DR) schemes, including schemes now subject to the Loan Charge.

The information disclosed through Freedom of Information (FOI) requests has, at last, revealed what the Loan Charge APPG already knew from our own evidence, but which HMRC previously had not acknowledged: that numerous contractors using ‘disguised remuneration’ (DR) schemes have worked for HMRC and wholly owned subsidiary company, Revenue and Customs Digital Technology Services Limited (RCDTS).

We have published a report on this matter, which can be found [here](#).

HMRC have finally acknowledged that they did use contractors using DR schemes, having previously evaded questions on the subject, including from the House of Lords Economic Affairs (EAC) Finance Bill Sub-Committee. It is clear that HMRC have only done so as a result of being compelled to disclose the information through FOI requests.

HMRC claim it was clear schemes were unacceptable whilst using contractors using these same schemes

Part of the argument for the Loan Charge from HMRC and the Treasury is that the ‘law was clear’ and that HMRC were always clear that these arrangements were unacceptable (and they claim they communicated this effectively, even though the evidence shows they did not).

Yet the reality is, far from ‘being clear’ that these schemes were unacceptable and ‘did not work’, HMRC *itself* was using contractors who were using such schemes right up to 2020, even after the

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Loan Charge was introduced to Parliament and long after the Loan Charge legislation had been passed.

This is more information that shows that the conclusion reached by the Morse Review (staffed by HMRC and Treasury officials and with input from HMRC and the Treasury) that the law was clear from 2010 is unsound.

HMRC withheld this information from a Parliamentary Select Committee

Most seriously, however, the information revealed by Freedom of Information exposes the fact that HMRC withheld the discovery that they did have contractors using the schemes they say were always unacceptable (including schemes subject to the Loan Charge). In particular, it is now clear that HMRC (including senior officials) decided to withhold this information from a Parliamentary Select Committee that had challenged HMRC over this matter.

It is also now established that when the information was discovered, HMRC did not publish this information, nor share it with the House of Lords Economic Affairs Committee, despite the Committee's letters to HMRC regarding this matter. As you know, the Committee had written to Ruth Stanier, following her appearance before them on 22nd October 2018 and her failure to answer questions from Committee members.

The following is an extract from an internal email, sent by a member of HMRC's Solicitor's Office and Legal Service department (name redacted) to senior HMRC officials on 30th September 2020:

"A series of FOI requests have now been received that will lead to this information being revealed publicly for the first time. These requests are directly linked to an ICO complaint from last year concerning a letter from Ruth Stanier to Lord Forsyth on the same matter".

This makes clear that the information had not been revealed previously, which confirms that HMRC withheld it – and specifically had decided not to share it with the EAC/Sub-Committee.

What the FOI responses have specifically shown, with regard to HMRC withholding this information, is as follows:

- First of all, we now know in November 2018, HMRC discovered that five contractors had been identified as having a history of using DR schemes and that one of those five was still engaged by HMRC at the time. This was not shared with the Committee, *despite the correspondence between the Committee and HMRC on this very matter at the same time.*
- Secondly, it is now clear that upon establishing (from the analysis conducted in November 2019) that HMRC (and RCDTS) had indeed used contractors using DR schemes, HMRC failed to inform the EAC/Sub-Committee, when it was something that the Committee *should* have been informed about, having previously asked about it in a formal Committee meeting and in four

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follow-up letters. It seems clear from the wording of emails, that a decision was taken within HMRC to withhold this information, because HMRC knew it was “sensitive”, in other words, that it was embarrassing to HMRC.

- Thirdly, we now know that two of these five contractors originally identified in 2018 (but withheld from the EAC) actually had used DR schemes whilst working for HMRC, *which means that HMRC wrongly concluded that they had not*. This was discovered in October 2020. This makes the decision to withhold the identification of the five a more serious matter, because as a result, HMRC had misled a Parliamentary Committee by giving the impression (intentionally or not) that they had no records of contractors using DR schemes whilst working for HMRC; whereas in fact they did, but had failed to properly establish and certify this.

This is confirmed in the following Freedom of Information response extract (FOI2020/01832, dated 2nd November 2020) from the HMRC Freedom of Information Team (signed as HM Revenue and Customs):

“As has been previously provided, in November 2018, HMRC was aware of five individuals who had a history of using DR schemes and providing services to HMRC. HMRC records did not show these individuals to have utilised a scheme while services were provided to the department...In October 2020, a further analysis of these individuals using ‘updated compliance’ information was provided. This further analysis showed that in two cases, the usage of a DR scheme *was* concurrent with the provision of services to HMRC”.

So HMRC, presumably including senior officials, have been involved in a decision to fail to inform a Parliamentary Select Committee regarding an important matter the Committee had asked about, for the clear reason that the sharing of this information was “sensitive” and embarrassing to HMRC.

We believe that withholding this information from a Parliamentary Select Committee, in this way and for this reason, is likely to be a breach of the Civil Service Code.

We believe there should be an investigation into this.

Further questions to answer

There remain serious questions that still need to be answered about this matter, including the question of how HMRC could themselves have got into a position of using contractors using schemes they claim were unacceptable forms of tax avoidance.

We trust you and your senior colleagues will now be open, transparent and forthcoming in answering these, as follows:

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1. Regarding information HMRC established in November 2018 (that five contractors had been identified as having a history of using DR schemes and that one of those five was still engaged by HMRC at the time):
 - a. Who made the decision not to share this information with the EAC Sub-Committee?
 - b. Were you personally involved in that decision, as First Permanent Secretary and Chief Executive?
 - c. Considering that she was engaged in correspondence with the EAC Sub-Committee over this very matter at the time (November 2018), why did Ruth Stanier not inform the Committee about its discovery, in writing?
2. Regarding information HMRC established in November 2019 (that contractors had worked for HMRC and RCDTS whilst using DR schemes):
 - a. Who made the decision not to share this information discovered in November 2019 with the EAC Sub-Committee?
 - b. Were you personally involved in that decision, as First Permanent Secretary and Chief Executive?
3. Regarding information HMRC established in October 2020 (that two of the original five contractors identified in November 2018 had used DR schemes whilst concurrently working for HMRC and that the original conclusion was incorrect):
 - a. Who made the decision not to share this information discovered in October 2020 with the EAC Sub-Committee?
 - b. Were you personally involved in that decision, as First Permanent Secretary and Chief Executive?
4. Why did HMRC not inform the Economic Affairs Committee as soon as it was discovered that HMRC/RCDTS had used contractors using DR schemes, knowing the Committee had directly asked about this and were not satisfied with the answers given at the time?
5. Why did HMRC/RCDTS fail to identify that contractors being engaged were using disguised remuneration schemes, despite claiming to perform 'diligent' compliance checks?
6. Can you confirm whether or not contractors working via Capgemini (and similar service providers/supplier companies) are included in the searches so far performed to identify HMRC/RCDTS contractors using DR schemes?
7. How many contractors in total do you estimate HMRC used, that were using disguised remuneration schemes from December 2010 to 2020 (including those who worked via a service provider, such as Capgemini)? *Overall, it is clearly many more people than the 15 identified so far by HMRC.*

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8. How many contractors in total do you estimate RCDTS used, that were using disguised remuneration schemes from July 2015 (date of incorporation) to 2020 (including those who worked via a service provider, such as Capgemini)?
9. From HMRC records of individual tax returns (which you must have) how many former HMRC/RCDTS contractors were subject to the Loan Charge (and either settled to avoid it or still face it)?
10. How can it be credibly claimed that HMRC “were always clear” that these schemes were unacceptable and “did not work”, when HMRC/RCDTS had individuals using them, whilst working for HMRC/RCDTS, using HMRC email addresses?


We ask that you answer these questions properly, fully and accurately to finally establish the situation regarding HMRC use of contractors using DR schemes.

We look forward to hearing from you.

Yours sincerely,



Sir Ed Davey
Co-Chair



Ruth Cadbury
Co-Chair



Sir Mike Penning
Co-Chair

Cc House of Lords Economic Affairs Committee/Finance Bill Sub-Committee
Treasury Select Committee

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